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In re Application of
NIEDERNOSTHEIDE et al.

Application No.: 10/089,303

PCT No.: PCT/DE00/03440

Int. Filing Date: 29 September 2000

Priority Date: 30 September 1999

Attorney's Docket No.: 32860-000314/US

For: THYRISTOR ARRANGEMENT WITH TURNOFF:
PROTECTION.

DECISION ON PETITION

UNDER 37 CFR 1.181

This is in response to applicant's "Petition under 37 CFR 1.181 to Withdraw Holding of Abandonment" based upon a failure to receive an Office Action filed in the United States Patent and Trademark Office (USPTO) on 26 September 2006 alleging that applicant did not receive the Notification of Missing Requirements mailed on 17 June 2002.

BACKGROUND

A review of the application file reveals that the NOTIFICATION OF MISSING REQUIREMENTS was mailed by the USPTO on 17 June 2002. The notification indicated that an oath or declaration in compliance with 37 CFR 1.497(a) and (b) was required. Applicant was given two months to respond to the Notification or until 17 August 2002 with extensions of time (up to 5 months) available under 37 CFR 1.136(a). No response to the Notification of Missing Requirements was received, and thus, the application was held to be **ABANDONED** as of midnight on 17 January 2003.

On 05 October 2004, a Notification of Abandonment (Form PCT/DO/EO/909) was mailed to applicant. On 02 November 2004, applicant filed the instant petition to withdraw the holding of abandonment. Applicant refiled the petition on 26 September 2006 along with a status inquiry.

DISCUSSION

In order to establish that papers were not received, a petition under 37 CFR 1.181 with a proper showing is required. As set forth in the Official Gazette at 1156 OG 53, the petition must include the following: (1) a statement by the practitioner that the Office action was not received by the practitioner; (2) a statement attesting that a search of the file jacket and docket records indicates that the Office action was not received; and (3) a copy of the docket record where the non-received Office action would have been entered had it been received (the docket records must also be referenced in practitioner's statement). No petition fee is required.

Item (2) is satisfied by the practitioner's statement attesting that a search of the file jacket and docket records indicated that the Office action was not received. However, Practitioner does

not make the statement that the Office action was not received by the practitioner; thus Item 1 is not yet satisfied.

With regard to Item (3), applicant submitted a copy of the "file jacket for the present application (Exhibit I) and the firm's docketing records for the present application (Exhibit II)" which "reveals that the Notification of Missing Requirements (Form PCT/DO/EO/905) dated June 17, 2002 was never received."

This docket record does not exclude the possibility that the "Notification of Missing Requirements" was in fact received by counsel's firm, but inadvertently docketed to the wrong attorney/application. The computer docket record relied upon by counsel establishes only that the Notification was not docketed in connection with the application's docket record, not that such Notification was not received. It is for this reason that the Office generally requires, as the appropriate docket record for establishing nonreceipt of an Office communication, a record of all USPTO responses due on the due date for reply to the communication at issue (i.e., a listing of all replies due in the USPTO on 17 August 2002 for the present case). MPEP 711.03(c)IA. Counsel does not indicate that the records submitted represent the docket record where the non-received office action would have been entered had it been received.

The appropriate docket record for establishing nonreceipt of an Office communication, is a record of all USPTO responses due on the due date for reply to the communication at issue (i.e., a listing of all replies due in the USPTO on 17 August 2002 for the present case).

Thus, applicant has not provided Practitioner's statement that the Office action was not received by the practitioner and has not provided the proper showing necessary to withdraw the holding of abandonment. The petition may not be properly granted at this time.


CONCLUSION

For the reasons above, the petition under 37 CFR 1.181 is **DISMISSED** without prejudice.

The application remains **ABANDONED**.

Any reconsideration on the merits of this petition must be filed within **TWO (2) MONTHS** from the mail date of this decision.

Any further correspondence with respect to this matter should be addressed to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.


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